

REMARKS

Claims 1-20 are pending in the present application and subject to a Restriction Requirement and Species Election.

Restriction Requirement

The Examiner has required election in the present application between Groups A-G under PCT Rule 13.1. (*See*, Office Communication of September 12, 2008, at pages 2-3, hereinafter, “Office Communication”).

For the purpose of examination of the present application, Applicants elect, with traverse, Group B, Claims 1, 4, 6 and 9-12, drawn to the polypeptide SEQ ID NO: 71.

Applicants assert that it would not be an undue burden to consider all of the pending claims in a single application. According to MPEP § 803, if the search and examination of an entire application can be made without a serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions. The Examiner has not provided citation to any reference which is alleged to destroy the unique special technical feature of the presently claimed invention. Applicants therefore respectfully request that the Examiner consider all of pending claims 1-20 in the present application.

Reconsideration and withdrawal of the restriction requirement are respectfully requested.

Species Election

The Examiner has additionally required an election in the present application between specific cancers: colorectal, esophageal, gastric, or breast cancer.

For the purpose of examination of the present application, Applicants elect gastric cancer, with traverse.

At least claims 1, 4, 6 and 9-12 are directed to the elected species. As acknowledged by the Examiner, at least claims 1, 4, 6 and 9-12 are generic.

Applicants are aware that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

According to US practice, Applicants understand that they must elect a single species for further prosecution. However, once the Examiner finds allowable subject matter based upon the single species elected, the Examiner is required to then expand the search to include a reasonable number of additional species. As provided in the M.P.E.P. at § 809.02 and stated by the Examiner:

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

CONCLUSION

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Thomas J. Siepmann, Ph.D., Registration No 57,374, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: October 14, 2008

Respectfully submitted,

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